(2005) 01 AHC CK 0008

In the Allahabad High Court

Case No : Trade Tax Revision No. 889 of 2004

The Commissioner, Trade Tax — APPELLANT

Vs

Padam Gramodyog Samiti — RESPONDENT

Date of Decision : 24-01-2005

Acts Referred:
Uttar Pradesh General Clauses Act, 1904 — Section 21
Uttar Pradesh Sales Tax Act, 1948 — Section 4
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 18, 25, 4

Citation : (2005) 01 AHC CK 0008

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : B.K. Pandey and S.C, for the Appellant; Bharat Ji Agarwal and Piyush Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act (hereinafter referred to as the "Act") is directed against the order of the Tribunal dated 1st December, 2003 relating to the assessment year, 1998-99.

2. Dealer/opposite party (hereinafter referred to as "Dealer") was engaged in the business of manufacture and sale of detergent cake, detergent powder, toilet soap and laundry soap. Dealer had two manufacturing units. One situated at village Bijaura, post office Bhawar Nath, Azamgarh where detergent soap and toilet soap were manufactured and another unit was situated at Munda Jafarpur, Azamgarh where detergent powder and laundry soap were manufactured. Dealer claimed exemption on the turnover of the manufactured goods being unit of Khadi Gramudyog under Notification No. ST-1I-709/XI-9(53)/91-UP-Act-15-48-Order-97 dated 27th February, 1997. There is no dispute that the dealer is an institution certified by All India Khadi and Village Industries Commission or U.P. Khadi Village & Industries Board, Assessing authority disallowed the claim of exemption on the entire turnover on the ground that the turnover exceeded Rs.

50 lacs. Assessing authority was of the view that the exemption under the aforesaid Notification was available to only those institutions where total turnover in assessment year was less than Rs. 50 lacs. Dealer filed appeal before the Deputy Commissioner (Appeals). Deputy Commissioner (Appeals) allowed the appeal in part. Appellate authority has held that the institution was eligible to exemption upto the turnover of Rs. 50 lacs and held liable to tax on the turnover of Rs. 36,86,6937-. Against the order of the first appellate authority, dealer as well as Commissioner of Trade Tax filed appeals before the Tribunal. Tribunal allowed both the appeals in part and set aside the order of the first appellate authority and remanded back the matter to the assessing authority with the direction to allow the exemption on the turnover upto Rs. 50 lacs on each individual products manufactured by the institution which is covered under the Notification. Tribunal was of the view that each individual item mentioned in the Notification was eligible for exemption on the turnover of Rs. 50 lacs.

3. Heard learned counsel for the parties.

4. Learned Standing Counsel submitted that the view of the Tribunal that each individual product was eligible for exemption upto Rs. 50 lacs is illegal. He submitted that the Notification dated 27th February, 1997 contemplates exemption only on the turnover upto Rs. 50 lacs in a assessment year to the institution on its manufactured products. He submitted that the Notification does not contemplates exemption to the extent upto Rs. 50 lacs to each individual item.

5. Sri Bharat Ji Agarwal, learned counsel for the dealer submitted that the history of the Notification granting exemption to the institution certified by All India Khadi and Village Industries Commission or U.P. Khadi Village & Industries Board are relevant. He submitted that in the Notification No. 7037 dated 31st January, 1985 no exemption limit was fixed. In the Notification No. 3409 dated 01.10.1994, items eligible for exemption have been classified into five categories and for each category, different exemption limit in an assessment year in respect of the product of each of the village industries was contemplated. Thereafter, vide Notification No. 2454 dated 05.10.1995 exemption limit has been withdrawn and unlimited exemption was provided to the institution. He submitted that the previous Notification shows that the intent of the Legislature was to provide more and more exemption to the institutions certified by All India Khadi and Village Industries Commission or U.P. Khadi Village & Industries Board and therefore, exemption limit of Rs. 50 lacs has to be considered to each manufactured product by the institution mentioned in the Notification and the view of the Tribunal be upheld.

6. I have perused the order of the Tribunal and the authorities below.

7. In my opinion, order of the Tribunal is erroneous and cannot be sustained.

8. It is relevant to refer the relevant part of all the Notifications which are as follows:

Notification No. ST-II-7037/X-7(23)/83-U.P. Act-XV/48-Order-85, dated 31.01.1985

9. In exercise of the powers under clause (b) of Section 4 of the Uttar Pradesh Sales Tax Act, 1948 (UP Act No. XV of 1948), read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (UP Act No. 1 of 1904), and in supersession of all previous notifications issued under the aforesaid clause, the Governor is pleased to exempt, with effect from February 1, 1985, the sale or purchase of the goods mentioned in Column 2 of the Schedule hereunder by the persons or the class of persons mentioned therein, from tax under the said Act of 1948, subject to the conditions, if any, specified in Column 3 thereof.

-- Sl. No. Description of goods /persons/class of persons Conditions if an, -- 1 2 3 --

1. .... 2. .... 3. Institutions in UP certified by the All India Khadi and Village Industries Commission or U.P. Khadi Village & Industries Board. (a) on the sale of products of village Industries specified below; and (b) on the purchase of any goods On Condition That The connected with the manufacture of dealer Selling Such Gods To products of Village Industries or The Said Institution Purchases of products of Village Furnishes A certificate From Industries specified below:- The said institution, Duly Countersigned By The district Village Industries Officer Of The Uttar Pradesh Khadi & Village Industries Board to The effect that The , goods Purchases By It Are Connected with the Manufacture Of Products of The Aforesaid Village Industries or are products of such Village Industries. -- 10. Notification No. TT-2-3409/XI-9(53)/91-U.P. Act-15/48-Order-94, dated 01.10.1994, Gazette, dated 01.10.1994-

"In exercise of the powers under clause [c] of Section 4 of the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. XV of 1948) read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No. 1 of 1904), the Governor is pleased to make with effect from October 1, .1994, the following amendment in the Government Notification No. ST- II-7037/X-7(23)/83-U.P. Act-XV/48-Order-85, dated 31.01.1985 (S No. 3), as amended from time to time:

Amendment

In the Schedule to the aforesaid notification:-

(i) for entry at serial No. 3, the following entry shall columnwise be substituted namely:-

-- Sl. No. Description of goods/ Persons/class of Persons Conditions if any 1 2 3 -- 3. Sale of products of On the conditions that:- village industries (1) The exemption shall be specified below by the available on such products only as are institutions certified manufactured only by such by the All India Khadi institutions themselves. and Village Industries (2) Exemption may be withdrawn if Commissions or Uttar such institution misuses any of the Pradesh Khadi and conditions subject to which Village Industries exemption is admissible. Board. (3) Limit of exemption of turnover in respect of products of industries mentioned in columns (a) to)(d) shall be as mentioned against them institutions falling under sub Section (1) or sub Section (2) of Section 18 of the Uttar Pradesh Trade Tax Act, 1948 shall be allowed exemption in proportion to the period during which the business is carried on. The turnover in excess of the exempted turnover or the proportionate exempted turnover, as the case may be, shall be liable to tax at the rate applicable to the sale of commodity to which the turnover relates. -- (a) (1) Bee-keeping. Exemption up to the turnover of (2) Matches. rupees five lakhs in an assessment (3) Fireworks. year in respect of the products of each (4) Aggarbatti. of the village industry. (5) Palm gur and other palm products. (6) Shellac. (7) Bamboo and cane work. (8) Blacksmithy and carpentry (manufacturing and servicing involving use of power upto horse power). (9) Kattlia. (10) Broomstick. (11) Biroja and turpentine oil. (12) Dipped latex and rubber products. (13) Candles. (14) Stone crushing. (15) Rexine goods and PVC goods. (16) Goods made of bones and horns. (17) Camphor and its products. (18) Gum resins. (19) Fibre other than coir. (20) Manure and methane gas from cowdung and other waste products. (21) Bakery products. (22) Stationery material made from handmade paper/board such as file cover, file board, cadak, drawing paper invitation discards, greeting cards and paper mach. (23) Readymade garments and woolen hosiery. (b) (1) Pottery (excluding Exemption upto the turnover of bricks and tiles). rupees ten lakhs in an assessment year (2) Soap (other than in respect of the products of each of detergent soap and the village industry. toilet soap). (3) Cane gur. (4) Lime stone, lime shell and other lime products. (5) Goods made from brass copper and bell metal. (6) Paper, badi, chura, kheel and laiya.

(c)

(1) Detergent soap. Exemption upto the turnover of (2) Toilet soap. rupees twenty lakhs in an assessment (3) Ghani oil. year in respect of the products of each (4) Handmade papers. of the village industry. (5) Collection and processing of forest plants for medicinal purposes. (6) Processing, preservation and canning of fruits and vegetable including pickles. (7) Aluminium goods.

(d)

(1) Hides, skins and Exemption upto the turnover of leather & leather rupees thirty lakhs in an assessment goods. year in respect of the products of each (2)

Processing, packaging of the village industry. and marketing of cereals, pulses, spices and condiments. (3) Electronic goods.

(e)

(1) Lok vastra. (2) Poly vastra. (ii) the entry at Serial No. 11 shall be omitted. ---

11. Notification No. TT-2-2454/XI-9(53)-U.P. Act-XV/48-Order-95, dated 05.10.1995 reads as follows:

In exercise of the powers under clause (c) of Section 4 and Section 25 of the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. XV of 1948) read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No. 1 of 1904), the Governor is pleased to make, with effect from October 1, 1995 the following amendment in the Government Notification No. ST-II-7037/X-7(23)83-U.P. Act 15-48-Order-85, dated January 31, 1985 [S.No.3], as amended from time to time:

AMENDMENT

In the Schedule to the aforesaid notification, for entry at Serial No. 3, the following entry shall columnwise be substituted, namely:-

-- Sl. No. Description of goods/persons/ Conditions, if any class of persons -- 1 2 3 -- 3. Institutions in Uttar Pradesh On the conditions that- certified by the All India Khadi (1) The exemption shall be and Village Industries available on such products Commission or the Uttar only as are manufactured by Pradesh Khadi and Village such institutions themselves. Industries Board- (2) Exemption may be (a) On the sale of products of withdrawn if such institution Village Industries specified misuses any of the conditions below: subject tow which exemption (b) on the purchase of any is admissible. goods connected with the On the conditions that the manufacture of products of dealer selling such goods to Village Industries specified the said institution furnishes a below:- certificate from the said institution duly countersigned by the District Village Industries Officer of the Uttar Pradesh Khadi and Village Industries Board to the effect that the goods purchased by it are connected with the manufacture of products of the Specified Village Industries. --- 12. The notification No. TT-2-709/XI-9(53)/91-U.P. Act-15-48-Order-97, dated 27.02.1997 reads as follows:

^^m?kj izns''k lk/kkj.k [kaM vf/kfu;e] 1904 ?m?kj izns''k vf/kfu;e la[;k 1 lu~ 1904? dh /kkjk 21 ds lkFk ifBr m?kj izns''k O;kikj dj ,sDV] 1948 ?m?kj izns''k ,sDV la[;k 5 lu~ 1948? dh /kkjk 4 ds [kaM ?x? ds v/khu vf/kdkj dk iz;ksx djds] bl foKfIr ds xtV esa izdkf''kr gksus ds fnukad ls] jkT;iky le;≤

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la''kk/ku mi;qDrZ foKfIr vuqlwph esa de la[;k 3 dh izfof"V ds lhu ij fuEufyf[kr izfo"fV LrEHkokj j[k nhtk;sxhA

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3 vf[ky Hkkjrh; [kknh vkSj xzkeks/kksx vk;ksx ;k m?kj izns''k [kknh rFkk xzkeks|ksx cksMZ }kjk izekf.kr m?kj izns''k dh laLFkkvks}kjk uhps fofufnZ"V xzkeks|ksx ds mRikndksa dh fo?h ijA bu ''krksZa ij fd& ?1? NwV dsoy ,sls mRiknksa ij gh miyC/k gksxh tks ,slh laLFkkvksa }kjk Lo;a fofufeZr fd, x, gksaA

?2? NwV okil yh tk ldrh gS] ;fn ,slh laLFk,amu ''krkssZesa ls] ftuds v/khuNwV vuqeU; gS] fdlh dk nq:i;ksx djsaA

?3? fdlh ij fu/kkZj.k o"kZ esa dsoy ipkl yk[k :I;s fo?;/ku ?VuZvksoj? rd MwV miyC/k gksxhA

13. In my opinion, there is no ambiguity in the language of the notification, which had contemplated the exemption only to the extent of Rs. 50 lacs in an assessment year on the turn over of the manufactured goods by the institution certified by All India Khadi and Village Industries Commission or U.P. Khadi Village & Industries Board. It does not contemplate exemption on each product manufactured by the village industries. Perusal of the Notification dated 01.10.1994 shows that where the legislature wanted to give exemption upto certain limit in respect of the product of each of the village industry. It had been specifically stated that if the intent of the legislature would be to provide exemption upto Rs. 50 lacs to each manufactured product, it should have been mentioned in the notification and then the same language could be used as mentioned in the notification dated 01.10.1994. The language of the notification is plain and clear and there is no ambiguity. It clearly contemplates exemption to the institution on its manufactured product upto limit of Rs. 50 lacs in an assessment year. The intent of the legislature was clear to grant exemption on the turnover of Rs. 50 lacs only in ah assessment year to the manufactured product by the institution. In my opinion, there is no scope of any contrary intendment.

14. In the result, revision is allowed. Order of the Tribunal dated 01.12.2003 is set aside and the order of the first appellate authority is restored.